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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 452

GENE RIDGEWAY ..... *Petitioner*

v.

STATE OF ARKANSAS ..... *Respondent*

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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STATUTES INVOLVED

The statutory provisions involved are Arkansas Statutes, 1947, Sections 43-1301 and 43-2305. These enactments are printed in Appendix A, pp. 9-10.

CONSTITUTIONS INVOLVED

The Arkansas Constitution (1874) provisions involved are Art. 2, Sec. 10 and Art. 5, Sec. 9. The United States Constitution provisions involved are Amendments 6 and 14, Section 1. The provisions are printed in Appendix A, p. 11.

STATEMENT OF CASE

Petitioner entered a plea of guilty to the crime of embezzlement of public funds while serving as a Delinquent Tax Collector of Jackson County, Arkansas, in 1955. He has served his time and received a pardon from the Governor.

Petitioner sought public office in 1964 by filing for the office of Governor in the Democratic Primary Election. This action set in motion a chain of events which resulted in the Arkansas Supreme Court ruling that under the Arkansas constitution, Art. 5, Sec. 9, Petitioner was ineligible to hold public office as a consequence of his embezzlement conviction in 1955.

Whereupon, Petitioner sought to have the embezzlement conviction set aside from the records of the Court by filing a Petition for Writ of Error Coram Nobis in the Jackson County Circuit Court. The Writ was denied in the Jackson County Circuit Court and an Appeal was taken to the Arkansas Supreme Court which also denied the Writ after treating it as a Petition for a Writ of Certiorari.

Although Petitioner sets forth several reasons for this Honorable Court to grant Certiorari, which reasons Respondent will answer separately, the main underlying issue is whether or not Petitioner has been denied his Federal Constitutional rights because he can not hold public office in the State of Arkansas due to his conviction of embezzlement in 1955.

ARGUMENT

I

Formal Written Order of Conviction and Sentence.

Petitioner has not been denied any constitutionally protected right or privilege which need be reviewed by this Honorable Court. In all of the criminal proceedings, the Petitioner was treated with due process of law.

The mere fact that there is an absence of a formal Order does not deny the Petitioner of due process of law in this case. A perusal of the entire record will reflect that at all times Petitioner's rights were being fully protected.

A perusal of the record will reflect that after the plea of guilty had been accepted, a penitentiary commitment was entered in the Criminal Docket which recites that the Petitioner was sentenced to five years in the Arkansas State Penitentiary by way of the Arkansas State Hospital (R.32), and in the Jackson County Criminal Court Record (Book T), there appears an Order signed by Judge Ponder (R.34).

The most any Court could make out of the proceedings and docket entries in this case is that Petitioner was afforded a hearing embedded with due process of law. A Judgment may be shown inferentially by the language of the entry and Courts look to substance and not form in deciding the issue. *Duben* v. *Montgomery,* 144 Ark. 153, 221 S.W. 855; *McNeese* v. *Raines,* 182 Ark. 1091, 34 S.W. 2d 225.

II

Forfeiture of Right to Hold Public Office.

There is no complete absence of a record judgment which would be a violation of due process. Petitioner could at any time obtain adequate information from the dockets to ascertain how his case had been settled.

Since the substance is the protective element and not the form, Petitioner has suffered no injury for which he has a remedy of Certiorari.

Petitioner seeks to have his old criminal conviction set aside at this late date on the weakest of arguments that some nine years later he was denied the political privilege of running for public office as a result of the conviction.

Petitioner seeks the irreconceivable ruling that failure by the trial Court to instruct him that he would be barred from holding public office due to a conviction is a denial of due process of law.

This could conceivably be a possibility in the Respondent's opinion, provided this was part of the penalty provided by the Arkansas Criminal Code for such a violation. On the contrary, this result is not part and parcel of the "punishment, pains and penalties . . . , and the consequences . . . " provided in Arkansas Statutes 43-2305 (1947). The Arkansas Constitution Art. 5, §9, Apendix A, p. 11, is the authority for denial of the political privilege and in Respondent's opinion does not deny Petitioner of due process of law. The Circuit Court would be required to explain all criminal penalties and consequences. However, the Court should not be required to

explain consequences involving civil and political overtones. This would leave the door open to those who could imagine consequences not explained but sure to result as a consequence of a conviction due to social prejudice and pressure. Due process does not require the Judge to speculate but to explain the cold hard facts surrounding the criminal aspects of the situation.

Petitioner states that he faced arraignment without counsel. In his attempt to show there was no valid waiver of counsel made, he neglects to point out conflicting testimony in the record which indicates that a plea was entered with a thorough understanding of the situation (R.65, 69-70, 72-73, 75, 77-81).

This testimony reflects that Petitioner's rights were regarded and protected so that he could act through knowledge and understanding.

III

Reasonable Doubt as to Insanity.

Petitioner seems to be under the belief that the question of sanity was seasonably interposed so as to bring himself under Arkansas Statute 43-1301 (1947), Appendix A, p. 9. The record will indicate that several discussions concerning the situation took place before Petitioner was allowed to be arraigned. At the time Petitioner was arraigned, he did not mention a word about using insanity as a defense nor did any other person have the slightest indication that such a defense would ever be interposed.

Petitioner received his instruction, entered his guilty plea, and was sentenced. His mother proceeded to acknowledge her concern to the trial judge in chambers.

The issue of insanity was never put before the Court in a proper manner and the Court was under no duty to act in regard to such issue. But to dispel any misgivings a mother might possess about her wayward son, the trial judge included in his Order a procedure whereby Petitioner could be sent to the Arkansas State Hospital for a mental examination (R.83-86).

Petitioner now seeks to establish that his arraignment lacked due process under the 14th Amendment to the United States Constitution and that he had not been confronted with the medical witnesses who declared him without psychosis and mentally competent as provided by the 6th Amendment to the United States Constitution.

Petitioner does not stop to realize that an issue of insanity has not been properly placed before the Court, but was entered as a further protection of Petitioner's rights voluntarily by the Court.

In fact, Arkansas Statute 43-1301 (1947), which Petitioner say was violated, was followed. There was no insanity plea and no reasonable grounds to believe insanity existed until after the sentencing. Now the trial Court postponed the proceedings in order to have the Petitioner examined, i.e., he sent Petitioner to the Arkansas State Hospital before sending him to the Arkansas State Penitentiary.

The Court was under no duty to have Petitioner examined since the plea of insanity was not properly interposed. *Whittington* v. *State,* 197 Ark. 571, 124 S.W. 2d 8.

The Petitioner should not be allowed now to complain of a denial of due process when his rights were protected even when improperly presented to the Court.

IV

Acceptance of Guilty Plea and Hospital Examination Not a Denial of Due Process.

Petitioner's fourth ground for this Honorable Court granting the Writ of Certiorari is a combination of his second and third. This argument is cumulative and adds nothing new to his case.

Petitioner steadfastly clings to the position that the plea of insanity was seasonably interposed and thereby properly before the Court.

The record as previously stated represents that the Petitioner had been arraigned and sentenced before any mention of insanity had occurred. The Court accepted the guilty plea only after explaining about the right to counsel (R.83).

As this right may be waived, which was understandingly done using the test set out in *Johnson* v. *Zerbst*, 304 U. S. 458 (1938), the Court accepted the plea of guilty after being satisfied that such right to counsel was being validly waived.

Petitioner's rights were fully protected when the Court ordered a mental examination when such issue was never properly placed before the Court. Petitioner would like to have his Writ granted for an alleged error of an issue which never has been properly pleaded.

Respondent contends the Petitioner relies upon the frail argument that he was not warned that a conviction of embezzlement would deny him the political privilege of seeking public office. Respondent has already set forth the argument that this position is untenable.

CONCLUSION

Respondent submits that Petitioner has had his day in Court and which day safeguarded all of his Constitutional rights for which he has no ground for a Writ of Certiorari.

WHEREFORE, Respondents respectfully pray that the Petitioner's Petition for Writ of Certiorari be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A

ARKANSAS STATUTES CITED

Sec. 43-1301. Procedure when sanity an issue — Costs charged to county. Whenever a prosecution for any crime has been instituted in the Circuit Court by indictment or information, and the defense of insanity at the time of the trial or at the time of the commission of the offense has been raised on behalf of the Defendant and becomes an issue in the cause, or the Circuit Judge has reason to believe that the defense of insanity will be raised on behalf of the Defendant and will become an issue in the cause, or shall be of the opinion that there are reasonable grounds to believe that the Defendant was insane at the time of the alleged commission of the offense with which he is charged, or has become insane since the alleged commission of such offense, the Judge shall postpone all other proceedings in the cause and shall forthwith commit the Defendant to the Arkansas State Hospital for nervous diseases, where the Defendant shall remain under observation for such time as the Court shall direct, not exceeding one month. The Judge shall order the superintendent or supervising officer of the state hospital to direct some competent physician or physicians employed by the state hospital to conduct observations and investigations of the mental condition of the Defendant, and to prepare a written report thereof. On issuing such order, the Judge shall direct the Circuit Clerk to notify the Prosecuting Attorney and the counsel for the Defendant of the issuance of the Order. If the Defendant is at large on bail, the Court shall commit him to custody during the period and for the purposes of the examination herein-

before provided. If the trial has already begun when the issue of insanity is raised, and the Court deems it necessary for the proper administration of justice that a mistrial be declared, it shall be the duty of the Judge to declare such mistrial, and then to proceed as herein provided. The action of the Court in committing the Defendant for examination shall not preclude the State or Defendant from calling expert witnesses to testify at the trial, and such expert witnesses shall have free access to the Defendant for the purposes of observation and examination during the period of his commitment to the state hospital for examination. A written report prepared by the physician or physicians employed by the state hospital shall indicate separately the Defendant's mental condition at the time of the alleged offense. This report shall be certified by the superintendent or supervising officer of the state hospital, under his seal, or by an affidavit duly subscribed and sworn to by him before a Notary Public who shall add his certificate and affix his seal thereto. The state hospital shall be reimbursed by the County for such observation at the same rate as that established for the maintenance of patients under the provisions of Act 241, Ark. Acts of 1943 (Ark. Stats. (1947) Section 59-230). Provided further, that no more than ninety (90) days shall be chargeable to any county for any person committed to the state hospital under the provisions of this act regardless of the total amount of time that such person shall be required to be under observation.

Sec. 43-2305. Procedure in pronouncing sentence. The law in relation to the punishment, pains and penalties of all persons when convicted, so far as relates to them, and the sentence, shall be read to each convict, and the consequences fully declared to him, so that such person

so convicted and sentenced, shall in no instance be deemed ignorant of the sentence pronounced on him.

CONSTITUTIONS CITED

Arkansas Constitution, Art. 2, Sec. 10. Rights of accused enumerated — Change of venue. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by impartial jury of the County in which the crime shall have been committed; provided that the venue may be changed to any other County of the judicial district in which the indictment is found, upon the application of the accused, in such manner as now is, or may be, prescribed by law; and to be informed of the nature and cause of the accusation against him, and to have a copy thereof; and to be confronted with the witnesses against him; to have compulsory process for obtaining witness in his favor, and to be heard by himself and his counsel.

Arkansas Constitution, Art. 5, Sec. 9. Persons convicted ineligible. No person hereafter convicted of embezzlement of public money, bribery, forgery or other infamous crime shall be eligible to the General Assembly or capable of holding any office of trust or profit in this State.

United States Constitution, Amendment 6. (Rights of the Accused.) In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

United States Constitution, Amendment 14, Sec. 1. (Citizenship — Due process of law — Equal protection.) All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.